IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2482 OF 2004

Vidhushekhar Vasant Zambare : Petitioner

V/s.

Narhari Co-op. Housing Society Ltd. & Ors.: Respondents

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Mr.Anurag Jain i/b. Dr.V.K. Choudhari for the petitioner.

Mr.A. S. Desai for respondent nos.1 to 3.

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CORAM : S.A. BOBDE, J.

April 8, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Desai, learned counsel, appears and waives service of rule on behalf of respondent nos.1 to 3.

Heard by consent.

2. The petitioner has challenged the order of the Divisional Joint Registrar, Co-operative Societies, Pune Division, dated 12.5.2003 confirming the issue of recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". The respondent no.1 society obtained a

recovery certificate for a sum of Rs.12,263/-. This amount is due to the society on account of maintenance charges from July 1997 to March 2000, white wash funds of Rs.340/-, late fee of Rs.2805/-, extra contribution of Rs.2,000/-, penalty of Rs.320/- and recovery expenses of Rs.700/-. The learned counsel for the petitioner strenuously urged that the recovery certificate was confirmed by the revisional authority, even though there was no resolution of the society authorising it to recover charges for some items like white wash, late fee and penalty.

3. Section 101 of the Act reads as follows:-

> **"101. Recovery of arrears due to certain societies as arrears of land revenue**.(1) Notwithstanding anything contained in section 91, 93 and 98, on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947, or advancing loans for other agricultural purposes repayable during a period of not less than eighteen months and not more than five years for the recovery of

arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance or for other agricultural purposes as aforesaid or by a crop-protection society for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop-protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them, or by a Taluka or Block level village artisans multi-purpose society advancing loans and arranging for cash credit facilities for artisans for the recovery of arrears of its dues, or by a co-operative housing society for the recovery of arrears of its dues, or by a co-operative dairy society advancing loans for the recovery of arrears of any sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues, or

by salary-earners co-operative society for the recovery of arrears of its dues, or by a fisheries co-operative society for the recovery of arrears of its dues, or by any such society or class of societies, as the State Government may, from time to time, notify in the Official Gazette, for the recovery of any sum advanced to, or any subscription or any other amount due from, the members of the society or class of societies so notified; and on the society concerned furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears.

Explanation.- For the purposes of this sub-section, the expression "other agricultural purposes" includes dairy, pisciculture and poultry.

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub-section in respect of

any amount due as arrears, the Registrar may, of his motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by Sections 140 to 144 of the Bombay Land Revenue Code, 1879 or any law or provisions corresponding thereto for the time being in force, until the arrears due to the concerned society, together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or

> security for payment of such arrears is furnished to the satisfaction of the Registrar."

It is clear from a plain reading of the section that the Registrar is entitled to grant a certificate on the basis of statement of accounts furnished by the concerned society.

4. In any event, the learned counsel for the respondent denies that there was no resolution authorising the recovery of the said amount. The Registrar has given a categorical finding that the certificate of recovery was based on a statement of accounts. The learned counsel for the petitioner has not been in a position to point out any material to show that there was no such statement of account on the basis of which the recovery certificate was issued. In this view of the matter, there is no merit in the petition which is hereby dismissed. The rule stands discharged.

5. The respondent shall be entitled to withdraw the amount deposited by the petitioner in this Court.

Sd/-

S.A. BOBDE, J.